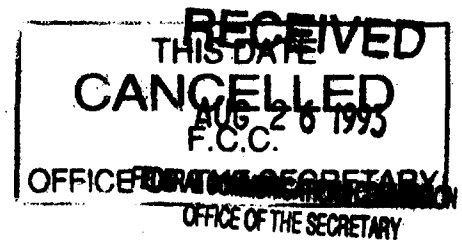


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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementing of Sections of)
The Cable Television Consumer)
Protection and Competition Act)
of 1992)

Cost of Service)

To: The Commission

93-215

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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I. SUMMARY

The attached document addresses some of our concerns with respect to the Notice of Proposed Rulemaking of July 15, 1993 (the "Notice"). We have reviewed the proposed regulatory requirements suggest in the Notice to govern cost-of-service showings by cable operators and submit herein our comments. Each of our comments indicates the page and paragraph it relates to.

1 II. COMMENTS TO THE COST OF SERVICE NOTICE

2
3 Page 6 Para. 7 - What rate levels our cost-based requirements should
4 produce in relation to benchmark rates.

5
6 COMMENT to Page 6 Para. 7 - Under the current structure of regulation,
7 including the rate freeze that is effective to November 15, 1993 we believe the
8 cost-based rates should allow a company to justify its current rates and to
9 realign its current rates based on the actual equipment charge and adjust the
10 balance to basic and cable programming service levels. The realignment would
11 comply with the rate freeze, but would not require companies to price basic and
12 cable programming services on a per channel basis. Rather the services could
13 be priced at or below the cost-basis level, without regard to a per channel
14 pricing basis. Based on our analysis, companies that 1) have minimal equipment
15 costs, 2) had rate increases prior to 9/30/92 and 3) have services that can be
16 unbundled and offered on a price per channel basis typically are most likely to
17 be the companies that are able to use the benchmarking Form 393's. Companies
18 that may have had a rate increase scheduled and implemented from 10/1/92 through
19 4/4/93 did, (at least in our case), schedule the rate increases to meet revenue
20 requirements based on cash flow projections, compliance with bank covenant
21 requirements and prior year activities. The benchmarking approach severely
22 devalues a company that may have implemented a rate increase on 10/1/92. The
23 cost-basis rate making should allow operators to justify those rates and provide
24 for some mechanism to increase rates to a level that in time will recover the
25 operator's costs.

27 Page 6 Para. 7 - What role generally a cost-based approach to ratemaking
28 play in our regulation of cable service rates.

29
30 COMMENT to Page 6 Para. 7 - We believe the cost-based approach should be
31 a viable alternative to benchmarking to justify higher than benchmark rates and
32 allow for increases to levels above a prescribed inflater, plus or minus other
33 external costs. The cost-based approach should not merely provide another method
34 of artificially reducing or limiting rate increases to levels below our revenue
35 requirements. Also, the cost-based approach must take into consideration that
36 the companies are allowed a reasonable return and that historically the return
37 or profit derived from a cable system normally came from a sale of the cable
38 system. Put another way, rates for cable service have generally been
39 artificially low in order to increase demand for the product. The cost-based
40 approach should allow an operator to recover its invested amounts, plus a
41 reasonable return, which in most cases would mean a recalculation of the
42 accumulated losses (to include the accumulated losses plus a determined
43 reasonable return), and a determination of the make-up of the accumulated losses,
44 (ie. is it basic, cable programming or a la carte programming related). An
45 approach that allows for the re-characterization of the accumulated losses would
46 prescribe depreciation and amortization lives and may provide for a
47 redetermination of allowable expenses. Also, an operator should be allowed to
48 fully recover its acquisition costs, whether it is tangible or intangible
49 related. In allowing for the full recovery of the acquisition costs and the
50 accumulated losses, a company will be made whole with respect to the allowable
51 recoverable amounts. What would then need to be determined is the rate at which
52 a company would be able to raise rates to achieve its allowable return. We

53 believe a mechanism based on cost increases along with the differential between
54 current rates and allowable rates under a cost-based approach should be
55 determined. We believe that in many situations current cable rates are
56 substantially below what would be allowed in a cost-based approach (assuming a
57 return of all acquisition and construction costs and any accumulated losses) due
58 to the consumer's perceived value of the product. If rates are raised too high,
59 customers will disconnect service.

60 Page 8 Para. 10 - whether our regulatory framework for cost-based rates
61 should also be guided by the goal of producing rates that approximate competitive
62 rate levels ie rates that approach the operators costs.

63
64 COMMENT to Page 8 Para. 10 - We do not believe that a goal of the cost-
65 based rates should be to produce rates as determined under benchmark pricing
66 because such an approach would result in the same approximate rates and would
67 invariably be more complex and time consuming to determine. The benchmark rate
68 approach hurts smaller operators, not only operators that have less than 1000
69 subscribers, but also smaller MSO that do not have enough subscribers to warrant
70 any significant programming discounts. The cost-based ratemaking goal must be
71 geared to allow the operator to justify current rates and allow for rate
72 increases that are regulated and controlled in a reasonable fashion. They should
73 not penalize operators solely because their real costs of acquisition and
74 operations of a cable system, are higher than that of another operator because
75 that other operator may have acquired its system under dissimilar market
76 conditions or because the other operator was able to secure more favorable debt
77 and equity rates due to size. Pricing mechanisms should take into account
78 system size and conditions under which the system may have been purchased.

79 Page 9 Para. 11 - conclusion that costs should be tier neutral.

80 COMMENT to Page 9 Para. 11 - We disagree with the concept that a low-
81 priced service tier created incentives for operators to move programming to
82 higher tiers and therefore regulation should be tier neutral. The approach of
83 a charge per channel to effectuate the tier neutral pricing is detrimental to
84 lower and fixed income consumers. Some of the primary reasons cable operators
85 have offered a low priced basic tier is: 1) to offer a reasonable price to
86 receive television reception of broadcast signals 2) to comply with the
87 requirement mandated by franchising authorities and 3) to reduce its copyright
88 liability which is based on all revenues generated from the lowest level of
89 service tier, that tier that include all broadcast signals. We have a system
90 located in the desert that is surrounded by mountains. The only realistic method
91 for customer to receive a watchable television signal is to subscribe to our
92 system. Many of these subscribers are economically disadvantaged and rely on
93 us offering a lower priced basic service. These consumers will be severely
94 impacted under the benchmark approach. Also, in general, the more expensive or
95 premier programming has been offered only on the higher tier due to the cost of
96 the programming. This will not change whether or not the pricing is tier neutral
97 although the tier neutral pricing may provide an incentive to an operator to
98 expand its basic service tier to include all free or relatively inexpensive
99 programming so as to change more to the basic subscriber.

100

Page 9 Para. 14 - we seek comment on the present economic and financial performance.....

COMMENT to Page 9 Para. 14 - It is critical for the Commission to review and evaluate the present economic and financial performance of typical cable systems prior to concluding this cost of service rulemaking proceeding. We are interested in providing economic and financial models of our cable systems based on actual performance from inception to date. However we are unable presently to compile this information due to the tight time constraints. We are willing to provide the information if requested by the Commission.

Page 11 Para. 17 - comment on the proposal that cost of service showings be restricted to a certain time limit.

COMMENT to Page 11 Para. 17 - We believe cost of service showings should be permitted to support annual rate changes. In order to effectively operate a business the operators must have the flexibility to reduce costs and, increase prices, particularly where the cable system is operating at a loss. We believe that it would be consistent with our current practice and that of the industry that rate increases are allowed once each year. The annual rate changes should be based on the date the operator submitted the proposed rates or the proposed rate implementation date. We believe that rate increases once a year are reasonable and would reflect practices in most industries. The cost of service showing has the potential to be a 6-month long process, as shown in the following example:

First rate increase after regulation

Last rate increase	10-1-92
Cost of service submission	11-16-93
Review, hearings and decision	05-15-94

127 Notice to customers of rate change (30days) 06-15-94

128 Effective date of rate change 07-15-94

129

130 Second rate increase after regulation

131 Earliest possible submission of next rate change 05-15-95

132 Review, hearings and decision 11-15-95

133 Notice to customers of rate change (30days) 12-15-95

134 Effective date of rate change 01-15-96

135 Earliest possible submission of next rate change 11-15-96

136

137 Under this scenario, where a cost of service showing may not be made until one
138 year after the resolution of the previous showing, an operator may be only be
139 allowed rate increases once every year and a half, and that could change if the
140 review and hearing period is extended. Also, in the event an operator uses its
141 year end financial information the 1 1/2 year process will mean some of the year
142 end data will be stale.

143

144 Page 11 Para. 18 - comment on whether we should establish procedural limits
145 or bars on cost of service showings seeking to justify higher than existing
146 rates....

147 COMMENT to Page 11 Para. 18 - We disagree with the presumption that most
148 operators have set rates in an unregulated environment that is fully
149 compensatory. Most operators set rates in an unregulated environment in an
150 amount equal to the necessary cash flow requirement. We as operators determine
151 the amount of revenue needed to fully cover our expenses and service the company
152 debt. We have never built into our rates a return to investors. That "return"

has always been determined and paid to investors upon the sale of the system. We have never been under the concept "pay as you go" where investors would receive return through dividend or other payments throughout the course of their investment. We have always operated under the theory "pay as you sell", where the investors receive their return once the system is sold.

Page 12 Para. 20 - use of a traditional formulation as the overarching standard to

COMMENT to Page 12 Para. 20 - This traditional formula does not work fully in the cable industry. Unlike other regulated industries, many cable companies are formed as limited partnerships and S-corporations. These entities do not have common and preferred stock and many due to their size have a higher cost of capital and debt than other companies. We believe a formula that allows the actual cost of debt and a reasonable cost of capital based on previous market conditions that existed should be use. This would establish a standard formula but not standardize the rates for debt or capital.

Page 13 Para. 21 - exclude from permitted annual expenses the expenses of providing services unrelated to the expenses of providing services.....

COMMENT to Page 13 Para. 21 - Currently there is not enough information to comment on such a general statement. We are concerned and would like the opportunity to comment on the specific "unrelated expenses" that may be disallowed.

177

178 Page 13 Para. 21 - prescription of depreciation rates....

179 COMMENT to Page 13 Para. 21 - It is reasonable for the industry to adopt
180 industry wide depreciable lives, but in the event an environmental or other
181 condition would signify that a different life is necessary the operator should
182 be allowed to challenge, on a case by case basis, the prescribed lives. As
183 stated earlier in our comment to Section 18, our rates have been established
184 based on necessary cash flow and with out regard to depreciation and
185 amortization. If depreciation lives are prescribed, operators should have the
186 opportunity to redetermine, from inception, the current book value of the asset
187 and the effect on accumulated losses based on the change in depreciable lives.

188

189 Page 13 Para. 21 - use of original cost methodology of cable plant ... and
190 exclude excess acquisition costs.....

191

192 COMMENT to Page 13 Para. 21 - We disagree with the use of original cost
193 and the disallowance of excess acquisition costs. First both the cost of service
194 showing and the benchmarking approach would impair our cable systems financially
195 to such an extent that loan defaults would follow and could result in bankruptcy
196 proceedings. Second, the use of acquisition cost, whether it increases the value
197 of the fixed assets or allocates the costs to intangible assets, should be
198 allowed since it will reflect a more accurate value of the cable system. The
199 cable industry theory that investors are paid only when a system is sold assumes
200 that the system losses that were built will be recovered upon sale. In most
201 circumstances we believe that had the company used original cost and been allowed
202 a post tax return of 14%, the return provided by the system to its investors

would in fact be higher than what has actually occurred in the acquisition process. Also, by allowing us to recover all dollars invested whether allocated to intangibles or other assets, the rates may be higher but such rates would promote increased capital expansion and system rebuilding.

Page 13 Para. 21 - we should establish a rate of return between approximately 10% and 14%....

COMMENT to Page 13 Para. 21 - We believe the rate of return should be determined based on the marketplace, ie. a system's actual cost of capital (debt and equity). For example, the rate allowed a large publicly held MSO that has access to cheaper sources of capital should be different than that of a small MSO that due to its size does not receive low debt rates and has a higher cost of capital. The smaller company should be allowed a larger rate in order accurately reflect the true cost of debt and equity.

Also, we believe that the post tax rate determined should be allowed even if the entity type does not pay taxes for the following reason. A cable system that is subject to federal and state income taxes will generally not pay taxes due to the allowable depreciation and amortization associated with the unregulated portion of the business or the depreciation and amortization associated with the regulated portion of the business but has been disallowed by regulators. That operator will receive benefit of higher revenue requirements, without an actual expense. A partnership or s-corporation should also be allowed to recover its effective rate of its investors to obtain the same use of capital that a C-corporation receives.

228

229 Page 13 Para. 22 - comment on the extent to which we should establish in
230 our regulations explicit transition elements addressing changes in financial
231 practices....

232

233 COMMENT to Page 13 Para. 22 - We believe there should be transition
234 accounting and interim regulations to go from an unregulated to a regulated
235 business. These could include a complete re of an operators cable system from
236 inception to date costs and calculated an allowed return. Such costs amount
237 could be determined on a going forward basis for cable cost basis. For example
238 an operator which built a system from scratch should be allowed to go back to
239 inception and recalculate what the company should have earned had regulation been
240 in place since inception of the cable system. Then that operator would determine
241 its cost of service recoverable amounts for book value of assets plus unrecovered
242 costs in earlier years. This would clearly demonstrate that the consumer is not
243 paying two or more times for their cable service, but that the consumer has never
244 adequately paid for their cable service.

245

246 Page 14 Para. 23 - prohibit recovers through regulated cable rates of
247 expenses unrelated to provision of regulated services.

248

249 COMMENT to Page 14 Para. 23 - In general a methodology must be determined
250 to identify the costs that are solely related to cable services and those that
251 could be allocated among the various regulated and unregulated services. We
252 believe the date the unregulated services were offered and the viewership from
253 inception to current should be factored into the allocation of allocable costs.

Page 14 Para. 24 - tentative conclusion that operating expenses should be recoverable.

COMMENT to Page 14 Para. 24 - We agree with the Commission's tentative conclusion that the operating expenses should be recoverable. In most cable companies (those not diversified) the primary revenue source is from basic and cable programming services and equipment. In being the primary source of revenue and the primary business of the company, operating expenses should be allowed as they relate primarily to regulated services.

Page 15 Para. 24 - disallowance of certain expenses.

COMMENT to Page 15 Para. 24 - The expenses listed in footnote #25 include charitable expenses. We believe that if the franchise agreement would require a charitable contribution or if the cable system provided a charitable contribution to a local school or other governmental facility in the franchise area than that cost should be recoverable in the basic service rates.

Page 16 Para. 27 - industry wide depreciation rate or band of reasonable rates or individual rates for each plant category...or adopt some other standard.

COMMENT to Page 16 Para. 27 - We believe that the depreciable lives should be prescribed. Unfortunately we have not had adequate time to indicate what we believe to be reasonable lives and rates.

Page 16 Para. 27 - we should prescribe recovery based on a straight line of remaining life basis or some other recoverable mythology.....

COMMENT to Page 16 Para. 27 - We believe that if new lives are determined that the current book value should be redetermined based on using the new life from inception. This may result in a lower or higher net book value and a corresponding change in the accumulated losses.

280 Page 16 Para. 27 - depreciation should be based on the book value of the
281 asset rather than the economic or fair market value.

282
283 COMMENT to Page 16 Para. 27 - We believe that the allowable book value
284 whether original cost, acquisition cost or what ever the allowable cost basis
285 for the asset is be used to determine the depreciable basis. We do not believe
286 that assets carried on the books at either original acquisition or other cost
287 should be revalued for depreciation purposes.

288 Page 16 Para. 28 - current industry depreciation practices including the
289 number of classes.....

290 COMMENT to Page 16 Para. 27 - We currently use the straight-line method
291 of depreciation for all assets. Although we maintain several asset categories
292 we have only 3 different lives. Assets depreciated over 10 years include the
293 headend and electronics. Cable system plant which includes the truck, feeder,
294 distribution system, and customer drops and taps are depreciated over 7 years.
295 Principally, all other assets are depreciated over 5 years (converters, remotes,
296 autos and trucks, construction equipment, test equipment, etc)."

297 Page 17 Para. 29 - whether we should for the time being only monitory
298 operators depreciation practices.

299 COMMENT to Page 17 Para. 29 - Currently based on the fast-track of this
300 regulation we believe this would be the most acceptable method of implementing
301 post regulation depreciation practices. We believe that the Commission should
302 state that the depreciation practices currently in use should be re-evaluated
303 and adjusted in order to comply with regulation. This will allow many companies
304 to change there depreciation methods and lives for financial statement purposes
305 because there has been a change due to regulation.

306

307 Page 17 Para. 30 - income taxes payable by individual owners, partners...
308 would not be recoverable....

309

310 COMMENT to Page 17 Para. 30 - In allowing income taxes to be recoverable
311 for Corporations in a cost of service showing but disallowing the same for other
312 business entities like partnerships is unfair and unequitable. In calculating
313 the allowable recovery for income taxes for regular C Corporations the statutory
314 rate is applied to the return allowed. The inclusion does not take into
315 consideration the amount of income taxes actually paid. Therefore a C
316 corporation is able to use the income taxes included in rate base as an
317 additional source of free working capital. Also, the C Corporation would not
318 necessarily pay any of the calculated Federal and state income taxes because that
319 entity would be able to use both the expenses associated with the unregulated
320 portion of the business along with any disallowed expenses associated with the
321 regulated portion of the business to offset the income taxes included in the rate
322 base. To distinguish between forms of ownership and include/exclude tax recovery
323 is discriminatory and elevates form over substance.

324 We like many other businesses selected our entity type based on various
325 considerations, which included taxability and ownership structure. Our selection
326 of ownership type did not include the potential effects of regulation. As a
327 partnership, our investors can incur income taxes based on 'phantom income'
328 whereas income is passed on to the investor without the cash. Our investors have
329 had the opportunity to receive some tax benefits from losses generated by the
330 partnership, although the investor in many cases could not use the tax losses
331 due to passive loss rules prescribed by the Internal Revenue Service.

332 We feel the argument that a C corporation is "double-taxed" is incorrect.
333 The corporation would only be double taxes to the extent that it has taxable
334 income and provides a non-deductible distribution to its stockholders.
335 Historically, corporations do not distribute, as dividends, the complete
336 earnings. We believe that the differential of the amount actually treated as
337 "double taxed" could be determined as an industry average and used to offset a
338 percentage allowed income tax rate for partnerships for the inclusion of income
339 taxes the rate base for partnerships.

340 We believe that the decision to allow or disallow income taxes for entities
341 not currently paying taxes at the entity level should be allowed based on the
342 effective or statutory tax rate of the person paying the taxes. Also, that
343 under this proposed rulemaking and due to the severe time constraints, we feel
344 no decision should be made currently and the decision to allow income taxes for
345 partnerships and S corporations should be evaluated on a case by case basis.

346 Page 18 Para. 32 - we should adopt these standards to govern costs that
347 may be included in plant in service.

348 COMMENT to Page 18 Para. 32 - We disagree with the allowance of only the
349 original construction cost. In systems that were acquired from unrelated third
350 parties, original cost may not be determinable. Also, we do not believe that
351 since other regulated industries use this approach it then is a valid basis for
352 the cable industry because the other industries have been regulated since or
353 close to inception. We believe there must be a transition approach to determine
354 the allowable amount as plant in service. This transition amount would consider
355 the accumulated depreciation and amortization that was never recovered in rates
356 and hence generated substantial accumulated losses for most companies. Again
357 the concern here is that our cable companies have not earned a profit nor

distributed monies to investors since inception. The investor return was to be made upon sale. Under an original cost theory we believe there is a basic premise that the company has in fact been earning a reasonable return since inception. This is invalid and an unfounded premise. Most cable companies have not been earning a reasonable return. The return is earned only upon sale.

Page 18 Para. 33 - approach to determine plant in service....

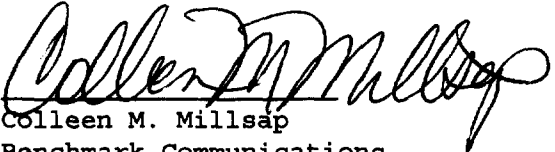
COMMENT to Page 18 Para. 33 - Due to the varying types of transactions that have occurred in the cable industry in the last 20 years we believe that the method of valuing plant in service should be determined on a system by system basis. We believe that operators should be allowed to use the fixed asset basis that has been recorded, pre-regulation, using generally accepted accounting principles. Also, there should be an adjustment to recover accumulated depreciation and a reasonable return in situations where the company has an accumulated losses attributable to depreciation taken in earlier years.

III. CONCLUSION

We have believe it would be in the best interest of the Commission, consumer and cable industry to issue broad guidelines until such time that interim transition cost of service regulations can be issued.

Respectfully submitted,

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